

forgery: and the fact of forgery may, when thus incidentally involved, be determined and relief given, founded upon a criminal fact, although it would be altogether improper for it directly to decide upon any such question upon a criminal charge. *Barnesly v. Powel*, 1 Ves. 120, 287; *Stace v. Mabbot*, 2 Ves. 553; *Duntze v. Levett*, *Fergusson's Rep.* 63; *Stark. Ec.* 4 pt. 931; *Peake v. Highfield*, 1 Russ. 560.

485 *It appears, that the first marriage of Mary with John Lewis was legally had and solemnized in Ireland; hence, according to the law of nations, it must be held to be a valid marriage here; for otherwise the rights of mankind would, in this respect, be in a most precarious and uncertain condition. *Roach v. Garcan*, 1 Ves. 159; *Herbert v. Herbert*, 3 Phill. 58; *Duntze v. Levett*, *Ferg. Rep.* 63; *Edmondstone v. Lockhart*, *Ferg. Rep.* 168; *Butler v. Forbes*, *Ferg. Rep.* 209; *Herbert v. Herbert*, 2 Hag. Cons. Rep. 263; *Ruding v. Smith*, 2 Hag. Cons. Rep. 371. And consequently the subsequent marriages of Mary in Maryland with Davidson, and after his death with Fulton, while her husband John Lewis was alive, must be considered as utterly void.

When a question of legitimacy becomes thus involved in a controversy in a Court of Chancery, it is said to be usual to make up an issue, and have the matter tried by a jury who are the proper Judges of fact. *Revel v. Fox*, 2 Ves. 270; *Read v. Passar*, 1 Esp. Rep. 213. But it is not indispensably necessary, in any case, that the Chancellor should have any fact determined by a jury. It is only when he entertains a reasonable doubt as to the fact, and when it depends on evidence the weight of which can be better estimated by a jury, or where the testimony is very obscure and contradictory, if he thinks fit that the Chancellor, for the information of his own conscience, may have recourse to this auxilliary mode of obtaining it. *Short v. Lee*, 2 Jac. & Walk. 496; *Peake v. Highfield*, 1 Russ. 560. But in this case the proof is so clear and demonstrative, that there is not the smallest room for a doubt upon the subject; therefore I hold it to be my duty to pronounce an immediate decree.

The proofs clearly establish the fact, that the late Mary, the mother of the plaintiffs, had been, long previously to their birth, legally married, and was then the lawful wife of a certain John Lewis, who at the time of the marriage, and continually ever since, has resided, and is now living in Ireland. And consequently these plaintiffs, who were all born in Maryland many years after their mother came to and resided in this State, are all of them illegitimate; and, as such, they cannot take as her legal representatives, or as the next of kin of the late Henry Somervell. The Act of 1825, ch. 156, has no retrospective operation, and therefore cannot affect this case.

Whereupon it is decreed, that the bill of complaint be dismissed with costs to be taxed by the register.